

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

_____)	
ENSOCARE INC.,)	
)	
Plaintiff)	
)	
v.)	Case No. 5:20-cv-00306-MTT
)	
ENSOCARE: HOLISTIC MENTAL)	
HEALTH SERVICES LLC,)	
)	
Defendant)	
_____)	

DEFENDANT’S MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P. 12(b)(1) AND/OR 12(b)(6)

NOW COMES Defendant Ensocare: Holistic Mental Health Services LLC pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), and respectfully moves this Court to dismiss the Plaintiff’s Complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted. The basis for Defendant’s Motion to Dismiss are briefly provided herein, and, pursuant to Local Rule 7.1, more fully detailed in the accompanying Memorandum in Support of Defendant’s Motion to Dismiss.

In the Complaint, Plaintiff makes statements alleging infringement of U.S. Trademark Registration No. 4414693 (the “Stylized Ensocare Mark”), but Plaintiff was not and is not the registered owner of the Stylized Ensocare Mark, depriving this Court of subject matter jurisdiction and prohibiting Plaintiff from possessing a statutory cause of action. Plaintiff also improperly attempts to assert a weak trademark against a non-competitor, evidences an implied license by its own allegations, fails to show (in light of the registrant’s disclaimer and surrendered components)

a colorable imitation of the Stylized Ensocare Mark, and improperly sets forth a “claim” for injunctive relief.

WHEREFORE, Defendant Ensocare: Holistic Mental Health Services LLC respectfully requests that this Court grant its Motion to Dismiss Plaintiff’s Complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted.

Dated: September 7, 2020

Respectfully submitted,

Steven Stewart LLC

By: /s/ Steven Stewart

Steven Stewart

Georgia Bar No. 719301

Attorney for Defendant

Ensocare: Holistic Mental

Health Services LLC

CERTIFICATE OF SERVICE

The undersigned certifies that on this 7th day of September, 2020, the foregoing document was electronically filed using the CM/ECF system, which will send notification of such filing to all counsel and parties of record.

Dated: September 7, 2020

/s/ Steven Stewart

Steven C. Stewart

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